IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1895 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VINOD K CHOTALIA

Versus

JILLA PANCHAYAT SURAT

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Appearance:

MR DR DHIMAR for Petitioner

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/02/2001

ORAL JUDGEMENT

1. Heard learned Advocate Mr. D.R. Dhimur. The revisioner herein is the defendant in Special Civil Suit No. 478/1992 who is aggrieved by an order passed by Civil Judge, (Senior Division) at Surat rejecting his application for condonation of delay in preferring an

application for setting aside a decree passed in the said suit under Order 8 Rule 10 of Civil Proceedure Code.

2. According to the revisioner as stated by him in the delay condonation application No. 92/1999 he came to know about the execution application by communication from his advocate dt. 23rd July, 1999. Thereafter, he obtained certified copies on 02.08.1999 and filed the application on 12.08.1999. However, if the order of the Court is seen it is amply clear that the applicant has not given correct facts and no reason is assigned which caused the delay. No reasons are indicated for condonation of delay either.

3. The judgement in the suit was rendered on 26.12.1997. Thereafter, execution application bearing no. 80/98 came to be filed wherein notice was served on the Revisioner. He appeared through an advocate in that matter on 11.02.1999 and stated that he has engaged an advocate. Again on 06.03.1999 the revisioner was represented by an advocate who sought time for filing written statement. Thereafter, also time was given for filing written statement in the Darkhast. Thereafter, a jungum warrant came to be issued and the matter was kept on 26th July, 1999.Thereafter, the revisioner preferred the present application on 12th August, 1999.

4. The applicant/ revisioner was therefore aware about the passing of decree, filing of execution application and still no steps are taken by the revisioner for setting aside that decree. It is only after the issuance of the jungum warrant that he preferred this application. This indicates that the revisioner was keeping a watch on the matter from a distance probably with a view to delay the proceedings and dodge the claim on the plaintiff. It cannot be said that the decree is passed behind the back. He was served summons in the suit but he failed to file a written statement and ultimately a decree was passed. Thereafter he was again served with a notice in the execution application. There also he appeared personally and only after a warrant is issued, he preferred an application for condonation of delay caused in preferring application for setting aside the decree. In view of this Court finds that no error is committed by the Trial Court either. No jurisdictional error is indicated and this Court is therefore not inclined to exercise revisional jurisdiction as envisaged under section 115 of Civil Proceedure Code. This Revision Application therefore stands rejected. No Costs.

(A.L. DAVE,J.)

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